IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 423 of 1996

in

SPECIAL CIVIL APPLICATIONNo 9618 of 1993

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE C.K.THAKKER

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PIOMA INDUSTRIES

Versus

UNION OF INDIA

Appearance:

MR SB VAKIL for Appellants

MR JAYANT PATEL for Respondent No. 1

MR AR THACKER for Respondent No. 3

CORAM : CHIEF JUSTICE MR.K.G.BALAKRISHNAN and
MR.JUSTICE C.K.THAKKER

Date of decision: 03/08/1999

CAV JUDGEMENT

Per Thakker,J:

This appeal is filed by M/s Pioma Industries against Union of India and others being aggrieved by the judgment and order passed by the learned Single Judge on April 2,1996 in Special Civil Application No. 9618 of 1993.

The appellants were the original petitioners. They filed the above petition for an appropriate writ, order or direction quashing and setting aside the order dated July 7, 1993 passed by the Central Government under Section 19A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as "Act"). The case of the appellants was that Pioma Industries and Imperial Soda Factory (`PIISF') was an association of persons. It carried on business of manufacturing Rasna Soda Drink Concentrates ( RSDC ) at Asarva, Ahmedabad. PIISF was provisionally ordered to be covered under the provisions of the Act with effect from February, 1978 as falling within the description `aerated water, soft drinks and carbonated water' in the First Schedule to the Act and was assigned Code No. GJ/2916 . According to the appellants, however, PIISF closed down its business in or around April, 1964. Pioma Industries (appellants) is a proprietary concern of Khambhata Family Trust and is not continuation of or connected with PIISF .

The appellants manufacture Rasna Soft Drink Concentrates (RSDC) which are not `soft drinks or carbonated water or aerated water'. By a communication dated October 27, 1989, the office of the Regional Provident Fund Commissioner, respondent No.2, informed the appellants that the appellants' establishment at Kalol started manufacturing process in February, 1984 and was covered under the Act with effect from August 1, 1988 as the appellant-industry was covered by Schedule I to the Act under Entry `aerated water, soft drink or carbonated water'. According to the appellants, the communication was issued in misconception of the provisions of the Act. The appellants attempted to convince respondent No.2 that the appellants' industry was not covered under the First Schedule, but there was no favourable response. The appellants, therefore, made a representation to the Central Government under Section 19A of the Act. Respondent No.2, however, insisted and proceeded further in pursuance of the communication. The appellants were, therefore, constrained to file Special Civil Application No. 4735 of 1990. A Division Bench of this Court by an order dated November 20,1992 directed the Central

Government to decide the appellant-petitioners' representation in accordance with law within a stipulated period.

The Central Government framed two questions as follows :-

(1) Whether the petitioners's establishment at Kalol is a new establishment or in continuation with the Asarva unit of M/s Pioma Industries.

(2) If not, whether the petitioners' establishment at Kalol falls within the scheduled industries i.e. "aerated industry".

Having framed the questions, the Central Government directed the second respondent to start proceedings under the Act and determine those questions after giving a reasonable opportunity to the appellants-petitioners to represent their case. In paras 11 to 13, the Central Government observed :

"11. In view of the said circumstances and facts, I am of the opinion that the question as to "whether the petitioner's establishment is in continuation with the previous establishment i.e. Imperial Soda Factory and Pioma Industry ", has not been determined properly in the quasi-judicial proceeding u/s 7A of the Act. The respondent is specifically pleading that the letter dated 27.10.189 was issued on the basis of wrong facts submitted by the petitioners and Annex,4 is not an order under section 7 of the Act.

In view of the above facts and circumstances of the case, I am of the further opinion that this case should be sent back to the respondent RPFC ,Ahmedabad,Gujarat with the following direction:

a) that the respondent will start proceedings under section 7A of the Act and determine the issue whether petitioner's establishment is in continuation of the previous establishment i.e. Imperial Soda Factory and Pioma Industry or a new establishment.

b) the respondent will give a reasonable opportunity to the petitioner to represent his case.

c) the petitioner will appear before the respondent within 15 days from date of passing this order and

cooperate the respondent in expeditious disposal of the case.

12. I add a note of caution that I am not assigning any opinion in the matter. It is upto the respondent to take independent view in the matter in view of the facts and circumstances of the case.

13. The liberty is given to the petitioner to file a fresh petition under section 19A of the Act, if he is not satisfied with the order of the respondent and if he is advised so."

Being aggrieved by the said order, the appellants preferred the present petition (Special Civil Application No. 9618 of 1993). The matter came up for final hearing and the learned Single Judge "partly allowed" the petition and modified the order passed by the Central Government.

In paras 8,9 and 10, the learned Single Judge observed:

"8. The Central Government took unnecessary long years in deciding the matter u/s 19A of the Act of 1952. After impugned order was passed on 7.7.1993, second respondent issued a notice u/s , 7A of the Act of 1952 on 1.9.1993, but there is no progress in the said proceedings, inspite of the fact that there is no stay of proceedings by this Court. Simply because a writ petition has been filed and notice has been issued thereon by the High Court, will not ipso facto stay proceedings, unless there is stay of proceedings by an order of the Court and same has been continued. It is the responsibility of the party to produce the or der of the court staying proceedings. Before this court also, the petition was filed in the year 1993, after notice, it was last adjourned to 15.2.1993. After 3 years, the matter appeared on admission board on 27.3.1996. Thus, in the facts of the case, it is expedient to give direction to second respondent for expeditious proceedings u/s 7A of the Act. By the impugned order the Central Government has given liberty to file a fresh application u/s 19A of the Act of 1952 if not satisfied with the order of the respondent and if so advised. In my view, the liberty given is uncalled for. Such liberty is likely to further delay the finality of the decision. Simply because a party is dissatisfied by the decision of the authority u/s 7A of the Act of 1952 will not give jurisdiction to the Central Government u/s 19A of the Act

of 1952. The provision of section 19A of the Act cannot be equated with remedy of appeal or revision. The provision of section 19A of the Act of 1952 can be invoked only when there is necessity to remove doubt or difficulty. Mr. Ajmera submits that there was no necessity of giving liberty to approach the Central Government in case of dissatisfaction of the order of the second respondent.

9. In view of the above , this Special Civil Application is partly allowed and the impugned order dated 7.7.1993 passed by first respondent is modified to the extent that the order giving liberty to the petitioner to file a fresh petition u/s 19A of the Act of 1952 in case he is not satisfied with the order of the respondent is quashed and set aside. It is directed that the petitioner or its representative shall appear before the second respondent on 18.4.1996. The second respondent shall decide the proceedings u/s 7A expeditiously within a period of 3 months from today."

10. Rule is made absolute to the aforesaid extent only. No order as to cost. Direct service permitted."

It is against the above order passed by the learned Single Judge that the present LPA is filed.

We have heard at considerable length Mr. S.B.Vakil for the appellants, Mr.Jayant Patel for respondent No.1 and Mr. A.R.Thakkar for respondent No.3 .

Mr. Vakil contended that the learned Single Judge has committed grave error in observing that the petition filed by the petitioners- appellants was "partly allowed". He submitted that the appellants were aggrieved by the order passed by the Central Government under Section 19A of the Act. The said order was not challenged by any of the respondents. At the most, therefore, the learned Single Judge could have dismissed the petition by confirming the order passed by the Central Government. Drawing our attention to the operative part of the order of the Central Government extracted hereinabove, Mr. Vakil contended that the Central Government had granted liberty to the appellants herein to file a fresh petition under Section 19A of the Act, if they were not satisfied with the order of the respondent . Learned Single Judge, however, observed in the impugned judgment that such liberty was "uncalled for". He also opined that such liberty was likely to further delay finality of the decision and hence, the order granting liberty to the appellants to file a fresh

petition under Section 19A of the Act was set aside. Learned counsel submitted that it was not within power and jurisdiction of the learned Single Judge to pass such order in the petition filed by the petitioners and take away the benefit which had been granted in their favour. The judgment of the learned Single Judge, hence, deserves to be interfered with on that ground.

Mr. Vakil further submitted that the learned Single Judge also committed an error of law in interpreting and/or interfering with the direction issued by a Division Bench in previous petition (Special Civil Application No. 4735 of 1990). According to him, a Division Bench in the earlier matter directed Union of India to decide the representation made by the petitioners latest by January 31, 1993. Since the order passed by the Central Government was not in consonance with the above direction, the appellants were constrained to approach this Court by filing the present petition. Learned Single Judge, in these circumstances, was bound to consider the fact as to whether the Central Government had complied with the order passed by the Division Bench. According to Mr. Vakil, inspite of clear and unequivocal direction of the Division Bench, the Union of India failed to carry out the order of the Division Bench. Learned Single Judge, in these circumstances, ought to have set aside the order passed by the Central Government as inconsistent with the direction of the Division Bench in the previous petition and ought to have issued writ of mandamus to the respondents to comply with the said direction. Not only that the learned Single Judge failed to do so, but he even took away the liberty which was granted by the Central Government to approach it once again.

On merits, Mr. Vakil submitted that there is non-application of mind on the part of the Central Government as well as learned Single Judge in not considering the most material and vital fact that two establishments i.e. appellant and PIISF were distinct, independent and separate. M/s Pioma Industries, a proprietary concern established at GIDC estate Kalol, (the appellants herein) was different from Pioma Industries and Imperial Soda Factory (PIISF) , an association of firms which was established at Asarva, Ahmedabad.

On all these grounds, learned counsel submitted that LPA deserves to be allowed and the judgment and order passed by the learned Single Judge is liable to be quashed and set aside as also the order passed by the Central

Government.

Mr. Jayant Patel, learned counsel appearing for the Central Government submitted that the order passed by the learned Single Judge does not deserve any interference in exercise of extraordinary jurisdiction under Article 226 of the Constitution. He submitted that the Central Government has directed the first respondent to decide the question under Section 7A of the Act and such order is appealable under Section 7-I of the Act.

Mr. Patel submitted that that the learned Single Judge was justified in passing the impugned order and in observing that it was not proper for the Central Government to grant liberty to the petitioners to approach it once again by filing a fresh petition under Section 19A of the Act. No such liberty could have been granted by the Central Government on July 7, 1993. Mr. Patel submitted that Section 19A of 1952 Act enabled the Central Government to remove difficulties in certain cases when any doubt arose in giving effect to the provisions of the Act. By Act 33 of 1988, Section 19A was deleted. Mr. Patel stated that by the same amendment, Sections 7-B to 7-Q were inserted and Section 7-I provided an appeal to a Tribunal. Thus, legislative scheme provided for resolution of dispute by competent officer under Section 7A of the Act and it also provided appeal to the Tribunal under Section 7-I. In these circumstances, no order could have been passed by the Central Government granting liberty to the appellants to invoke Section 19A of the Act.

Mr. Patel also submitted that it is not correct that the Central Government had not complied with the order passed by the Division Bench in earlier petition. The direction was to decide the representation and the representation was decided by the Government.

On merits, Mr. Patel submitted that as per the order passed by the learned Single Judge, the matter will be decided by respondent No.1. It is open to the appellants to raise all contentions before the first respondent which will be considered by him. If the appellants will be aggrieved by the order passed by the first respondent, a statutory appeal, under Section 7-B provided. He, therefore, submitted that LPA deserves to be dismissed.

Mr.Thakkar, learned counsel for the Union supported the arguments of Mr. Patel. He also submitted that though employees of the appellants are entitled to benefits

under the Act, they have been deprived of those legitimate benefits and the proceedings have been prolonged by the appellants. He, therefore, submitted that LPA may be dismissed.

So far as order passed by the learned Single Judge is concerned, in our opinion, direction issued by him cannot be said to be contrary to law or otherwise illegal. Mr. Vakil is right that the petition filed by the appellantspetitioners cannot be said to be `partly allowed' as the order passed by the Central Government was not set aside by the learned Single Judge and the liberty which was granted in favour of the appellants was taken away by the court. In our view, however, submission of the respondents is well founded that when an order is required to be passed in accordance with provisions of Section 7A of the Act, after extending opportunity to the appellants and the said order is subject to statutory appeal under Section 7-I of the Act, the order of the learned Single Judge is legal and proper. In fact, Mr. Patel was right in submitting that when a statutory appeal is provided against an order passed or decision made by the competent officer to a tribunal constituted under the Act, the party aggrieved has to avail of that remedy.

Now if we read the relevant provisons of the Act, it is clear that Section 7A of the Act enables the Central Provident Fund Commissioner, Additional Central Provident Fund Commissioner, Deputy Provident Fund Commissioner , Regional Provident Fund Commissioner or Assistant Provident Fund Commissioner to decide dispute as to whether provisions of the Act would be applicable to any establishment and to determine the amount due from any employer under the provisions of the Act or scheme framed thereunder, after conducting such inquiry as he may deem necessary and after giving reasonable opportunity to the employer to represent his case.

Section 7-I provides for appeal and it reads thus:

"Section 7-I (1) Any person aggrieved by a notification issued by the Central Government ,or an order passed by the Central Government or any authority, under the proviso to sub-section (3), or sub-section (4) of section 1, or section 3, or sub-sectino (1) of section 78A, or section 7B except an order rejecting an application for review referred to in sub-section (5) thereof or

section 7C, or section 14B, may prefer an appeal to a Tribunal against such notification or order.

(2) Every appeal under sub-section (1) shall be filed in such form and manner, within such time and be accompanied by such fees, as may be prescribed ."

Section 7-J prescribes procedure of Tribunals. Sub-section (4) of section 7-L enacts that order made by the Tribunal finally disposing of appeal shall not be questioned in any court of law.

In view of the abvoe provisons, there was no question of exercise of power under the `removal difficuties' clause (Section 19A) which stood repealed by Act 33 of 1988. Learned Single Judge, in these circumstances, in our opinion, had not committed any illegality or had not exceeded his jurisdiction in passing the impugned order.

Similarly, it cannot be said that the learned Single Judge has ignored or interfered with the order passed by the Division Bench in previous petition.

In Special Civil Application No. 4735 of 1990, direction was given to Union of India in para 4 which read as under:

"Respondent No.1-Union of India is directed to decide the representation dated December 4,1989 made by the petitioners latest by January 31,1993. It is further directed that the decision if adverse to the petitioners, for a period of fifteen days from the date of communication of the decision that may be taken on the representation, the impugned communication/ order produced at Annexure A dated 27.10.1989 and the impugned notice dated 11.1.1990, produced at Annexure B to the petition shall not be implemented. Subject to the aforesaid observations and directions, rule discharged with no order as to costs".

Thus, the direction was to decide the representation and it was done by the Central Government. Whether that representation was or was not decided in accorance with law can be made subject matter of fresh petition and in

fact, the appellants had filed petiton against the order passed by the Central Goverment. But from that , it cannot be said that the learned Single Judge has attempted to interpret earlier order or has acted contrary to law in disposing of the petition. That contention also, therefore, does not help the appellants.

Regarding merits of the matter, in our opinion, Mr. Patel is right that direction is given to the second respondent to decide the matter on merits in accordance with law. Obviously, therefore, all the questions will be decided by respondent No.2 after complying with provisions of the Act. If the appellant has grievance against the said order, a statutory appeal under section 7-I is available. We, therefore, express no opinion on the merits of the matter and we leave all contentions of all the parties open .

For the foregoing reasons, we see no substance in any of the contentions of the appellants. Appeal deserves to be dismissed and is accordingly dismissed. In the facts and circumstances of the case, there will be no order as to costs.

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